

**FINANCIAL OVERSIGHT AND MANAGEMENT BOARD
FOR PUERTO RICO**



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Executive Director

BY ELECTRONIC MAIL

December 3, 2018

Honorable Ricardo A. Rosselló Nevares
Governor of Puerto Rico
La Fortaleza
PO Box 9020082
San Juan, PR 00902-0082

Dear Governor Rosselló Nevares:

We write to inform you that over the past several months and across multiple areas, the Government has not always fulfilled its obligations under PROMESA. We would like to rectify this situation cooperatively as soon as possible.

First, on August 6, 2018, the Oversight Board adopted a policy on rules, regulations, and orders (the “Policy”). As clearly stated in the Policy and as provided for in Section 204(b)(4), the Oversight Board established a policy to require prior Oversight Board approval of certain “rule[s], regulation[s], or executive order[s] proposed to be issued by the Governor (or the head of any department or agency of the territorial government” to ensure that they “are not inconsistent with the approved Fiscal Plan.” The Policy applies to any “executive order that is issued in connection with or that concerns rightsizing of the Commonwealth (which includes the Executive, Legislative and Judicial branches of government) or any covered instrumentality,” including without limitation any executive order related to “employee compensation or benefits.” The purpose of the Policy and 204(b)(4) is to give the Oversight Board the ability to enforce the Government’s compliance with the certified Fiscal Plan.

In the last month, you have signed three executive orders – 2018-044, 2018-046, and 2018-049 – that pertain to employee compensation or benefits, and therefore are subject to the Policy. Moreover, each of these executive orders increased employee compensation or benefits. None of these executive orders were sent to the Oversight Board “before issuance” for our “prior approval.” Accordingly, Section 204(b)(5) empowers the Oversight Board to “take such actions as it considers necessary to ensure that such . . . executive order . . . will not adversely affect the territorial government’s compliance with the Fiscal Plan.”

Second, Section 204(a)(1)-(2) provides that “not later than 7 business days after [the Government] duly enacts any law . . . , the Governor shall submit the law to the Oversight Board” together with

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a “formal estimate . . . of the impact, if any, that the law will have on expenditures and revenues” and a “certification” opining whether the law is “significantly inconsistent with the Fiscal Plan.” The purpose of Section 204(a)(1)-(2) is to keep the Oversight Board apprised of laws as they are enacted and to ensure the Government certifies, subject to the penalties outlined in Section 104(l)(1)-(2), whether laws are consistent with the certified Fiscal Plan.

The last time we received a law, formal estimate, and certification from you was on August 29, 2018 with respect to Law 142. Since then, the Government has duly enacted almost 100 more laws, all of which were enacted more than 7 business days ago. Accordingly, you have failed to comply with Section 204(a)(1)-(2) for almost 100 laws because for none of those laws did you send the law, formal estimate, or certification. We raised this same issue with you in a letter, dated September 13, 2018, concerning Act 204-2018. Yet, we have not received a law, formal estimate, or certification pursuant to Section 204 since then.

Third, Section 203(a) provides that “[n]ot later than 15 days after the last day of each quarter of a fiscal year . . . , the Governor shall submit to the Oversight Board a report, in such form as the Oversight Board may require” describing budget to actual for such preceding quarter, and “any other information requested by the Oversight Board.” The purpose of Section 203 is to hold the Government accountable to the certified Budget and to alert the Oversight Board to deviations from the certified Budget, both with respect to revenues and expenditures, so that the Oversight Board can determine whether to exercise remedies under Section 203.

The Government did not submit complete Section 203(a) budget to actual reports for the Commonwealth, PREPA, PRASA, UPR, or HTA for fiscal year 2018. Last year, the Oversight Board consciously gave the Government additional time to comply with this requirement due to the destruction caused by Hurricanes Irma and Maria. However, more than enough time has passed for the Government to be able to timely comply with Section 203(a). For the first quarter of fiscal year 2019, we received partial Section 203(a) reports from the Commonwealth, PRASA, and HTA, and nothing from PREPA or UPR. To make this reporting as easy as possible, and to give the Government certainty that what it provides is what the Oversight Board seeks, the Oversight Board has created templates for the form Section 203(a) budget to actual reports must take.

Attached are templates for the Commonwealth for fiscal year 2018 year-end and fiscal year 2019 first quarter. Please complete and submit these templates – filling in the “actuals” and “variance” columns – for fiscal year 2018 year-end and fiscal year 2019 first quarter by December 21, 2018. In addition, please create templates for PREPA, PRASA, UPR, and HTA based on these Commonwealth templates, including the same level of detail, and complete and submit them for fiscal year 2018 year-end and fiscal year 2019 first quarter by December 21, 2018.

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These requirements in PROMESA serve important purposes. Each are designed to hold the Government accountable to the Oversight Board and the people of Puerto Rico that it is complying with the certified Fiscal Plan and certified Budget.

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Accordingly, all rules, regulations, administrative orders, and executive orders must comply with the Policy, which means submitting them to the Oversight Board “before issuance” for our “prior approval.” All laws must be sent to the Oversight Board, accompanied by a formal estimate and certification, within 7 business days of enactment. And all covered entities must submit timely, complete Section 203(a) reports every fiscal quarter. As you know, these mandates in PROMESA are not optional. The Oversight Board asks you to comply with each of them immediately so that the Oversight Board does not have to take action to enforce compliance.

Sincerely,



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